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A LEGISLATOR'S HANDBOOK FOR PARTICIPATION IN AN INTERIM STUDY

Gathering and Evaluating Information In the Legislative Process

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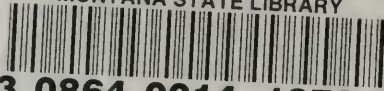


Montana Legislative Council

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**A LEGISLATOR'S HANDBOOK
FOR PARTICIPATION
IN AN
INTERIM STUDY
GATHERING AND EVALUATING
INFORMATION
IN THE LEGISLATIVE PROCESS**

**By Paul E. Verdon
Legislative Researcher**



**Robert B. Person
Executive Director**

PREFACE

A manual to guide legislators' involvement in interim committee work has long been needed. Now, through the diligent efforts of Paul Verdon and other members of the Legislative Council Research and Reference Services Division staff, that need is filled by this first edition of "A Legislator's Handbook for Participation in an Interim Study".

Many legislators habitually deride their own processes as useless. Efforts at using the interim between sessions to gather needed information are among the most commonly derided. But if you are a member embarking upon a study not yet done, the slate is clean. Whether you will look back upon your hours of travel and time in meetings as a waste of time or as an important contribution to the state depends largely upon you. Thoughtful consideration of what is possible, coupled with your active demand that committee work be aimed toward gathering useful information rather than toward achievement of a transitory political advantage, can assure your time will be well spent.

This manual contains the basic information you need to guide your work from committee organization to the details of how to receive your reimbursements for expenses. May it serve to play a role in making your interim work effective and gratifying.

-- ROBERT B. PERSON
Executive Director
Montana Legislative Council

THE BUSINESS OF LAWMAKING

Lawmakers are occasionally frustrated at the legislature's apparent inability to act promptly and decisively on important questions of public policy or finance. The root of this inability to solve perplexing problems often is the lack of complete background information on a problem.

The product of the legislative process can be no better than the information upon which the decisions are based. Therein lies necessity for the Legislature to continue its activities beyond its April adjournment in odd-numbered years.

The fruit of the efforts during the legislative interim is often more significant in determining the productivity of the lawmaking process than the activities during the tightly structured 90-day regular session. Following adjournment *sine die*, lawmaking enters a 20-month gestation period when public concerns contribute to legislative strategy to accommodate the complexities of modern life. The period constitutionally set aside every two years for the enactment and revision of laws through the deliberative decisions of the elected lawmakers is only the visible tip of the legislative iceberg. Submerged beneath that imposing peak is a mountain of work--usually observed by only a few professionally involved persons--of gathering, processing, and disseminating information that is fundamental to the formulation, evaluation, and expression of public policy in lucid, enforceable laws.



Interim research is an extension of the legislative process that is accomplished through the committee function with staff assistance provided by permanent legislative agencies. During the interim the individual

lawmaker's function is to develop ideas, but during a session he or she mainly reacts to hundreds of bills. The interim study allows a legislator the opportunity to explore alternatives, to seek out solutions, and to propose and test ideas.

Certain permanent statutory committees are responsible for ongoing oversight and research into the subjects of revenue, appropriations, administrative rules, environmental protection, utility regulation and related matters. Those committees endure despite evolving membership that reflects the changing composition of the legislature.

Because interim subcommittees are evenly balanced as to partisan membership, consideration of issues that offer the potential of political conflict should focus on gathering information that all participants agree is factually accurate and on outlining options for dealing with issues. Any effort to force into a report recommendations that cannot be supported from all viewpoints is futile and erodes confidence in the process.

Inquiry into a specific, immediate question of public policy or legislative need outside the jurisdictions of the permanent committees is accomplished by a select committee or a joint interim subcommittee created to gather information about a particular subject.

A select committee is a creature of statute authorized to complete a prescribed function and usually expires with the presentation of its findings to the subsequent legislature. The originating statute usually includes an appropriation to fund the committee's activities.

The typical study, however, is conducted by an interim subcommittee requested by a joint resolution to inquire into a specified subject area and to report to the next Legislature. Because a joint resolution lacks an

appropriation and the force of law, it is ineffective without the support of a funded agency.

Regardless of whether a study originates from a statute or from a joint resolution, its objectives and the duties of committee members and of staff are similar. Statutory creation and funding assures completion of the project; implementation of a joint resolution request is subject to availability of funds and to priority in competitive ranking of requests.

After the appointment of the members of all interim committees, the Legislative Council compiles and publishes the *Interim Directory of Legislative Committees*, an invaluable tool for all who follow the interim process.

ORIGIN OF AN INTERIM STUDY SUBCOMMITTEE

Section 40-60(1)(b) of the Joint Rules of the Montana Legislature authorizes the use of a joint resolution to request appointment of a joint interim subcommittee to study a particular subject.

Immediately after adjournment of a regular session, the Legislative Council is required under section 5-5-217, Montana Code Annotated (MCA), to prepare and circulate to all legislators a list of study resolutions approved. Each legislator then ranks each resolution according to the degree of importance he or she attaches to it.

After tallying the votes on prioritization, the Council arranges the resolutions in order according to rankings in the poll. The total of funds appropriated for study purposes limits the number of studies to be conducted, and the Council accordingly designates the number of interim subcommittees to be created and



assigns study topics to each. Depending upon complexity and similarity of the topics, more than one study may be assigned to a subcommittee.

Appointments of members to the joint interim subcommittees are made by the Speaker of the House and the Senate Committee on Committees. Section 5-5-211, MCA, requires that four members be appointed from each house and that no more than two members from each house may be from one political party. Legislators chosen to serve on an interim subcommittee usually are members of the standing committees that have responsibility for the subject matter of the study.

ASSIGNMENT OF STAFF

The offices of the Legislative Council, the Legislative Fiscal Analyst, the Legislative Auditor, the Environmental Quality Council, and the Consumer Counsel each provide staff for at least one permanent statutory committee.

The remainder of the committees and subcommittees usually rely upon the Legislative Council for staff assistance. However, there has been a tendency recently to assign personnel from other legislative agencies to staff additional committees.

In the Legislative Council, the primary responsibility for providing assistance to interim subcommittees resides with the Research and Reference Division, from which a member is designated as principal staff for each subcommittee. Assignments are based upon the experience, training, other work requirements, and interests of the several staff members. A staff attorney from the Legal Services Division is designated to provide legal support, including advice and research, to the researcher and to the subcommittee.

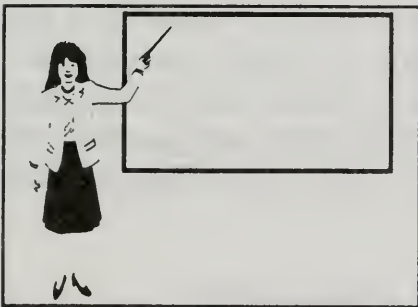
The Legislative Council is further authorized by section 5-11-111, MCA, to use the services of any research agency it considers necessary to complete the study.

ORGANIZING THE SUBCOMMITTEE

Neither statute nor rule prescribes methods for initiating the study group's work, but certain procedures have been accepted by precedent, tradition, and protocol.

The senior senator appointed to sit on the subcommittee assumes the role of acting chairman for organizational purposes.

In consultation with other members and the staff, the



senior senator selects a date agreeable to all for the organizational meeting, at which the tone, objective, and methods of the study are established. If either the members or the staff fail to reach complete understanding of and agreement on the

purposes and goals of the study and the research methods to be used, a satisfactory conclusion can be difficult.

The first order of business during the organizational meeting is the election, as provided in section 5-5-213, MCA, from the subcommittee membership of a chairman and a vice chairman, who may not be members of the same political party.

Scheduling of tentative meeting dates at the organizational meeting is not essential but will facilitate the efficient conduct of the study. The schedule is

subject to adjustment as the study progresses, but the outline is a framework for planning and execution of subcommittee business.

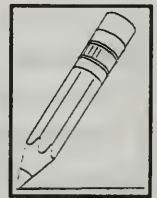
Because there are no established guidelines for the conduct of a study, the subcommittee should consider adopting rules that will regulate its meetings and the conduct of its business.

For a number of reasons, interim subcommittees usually try to complete their work by September 15 of even-numbered years. The members are then free to engage in political campaigns, and the staff concentrates on completing final reports and drafting legislation.

STUDY PLAN

Just as a tourist needs a road map to chart out the route he must follow to reach his intended destination, the subcommittee needs a plan of action and a schedule of activities to assure that the essential elements of its obligation are completed and that its objective is achieved.

This document--usually called a study plan, although it may sometimes be referred to as a study design or work plan--is originated by the staff researcher. The draft study plan outlines the problem to be assessed, the alternatives to be reviewed, the recognized background sources, and the agencies or individuals who might be called upon to develop the information needed. The study plan also includes a suggested schedule of meetings and hearings and a proposed time line for completion of the effort.



As the interim subcommittee approaches the completion of its work and contemplates its final report,

the study plan will provide a frame of reference for the members to determine how nearly they achieved their objective. In retrospect, the subcommittee will be able to decide if the result justified its effort. For this reason, a high degree of thought, care, and consideration must be devoted to preparation and adoption of the study plan.

The study plan may be modified as the work progresses, and deviation is not unusual. Nevertheless, the study plan expresses the intent and the objective of the subcommittee at its inception. Deviation from the study plan should not lead the subcommittee members away from their stated objective.

At or before the first meeting, the staff researcher presents the draft study plan to the subcommittee for scrutiny, revision, approval, or rejection. Upon final ratification, the study plan becomes the chart by which the subcommittee gauges its progress toward its objective. From its original conception by the staff researcher, the study plan evolves in its final form to express the intentions and the objective of the subcommittee.

IMPLEMENTING THE STUDY

An effective staff person may be identified with a study in the minds of many observers, but the study and its direction, content, and conclusions at all times remain those of the subcommittee. The role of the staff is to assist the subcommittee to conduct the most inclusive and the most productive study possible. The staff's functions are limited to administration, information gathering, writing of reports, and drafting of legislation, as directed by the members.



The staff assists the subcommittee to accomplish its purpose of pursuing assigned public policy questions so as to discover all facts relevant to the question, to discuss and evaluate those facts, and to formulate policy recommendations arising from the synthesis of those facts.

The staff initiates the study by presenting a proposed study design and work plan to the subcommittee for its consideration at the first meeting. The clarity and specificity of the study resolution contributes to the lucidity of the plan conceived by the staff.

A sharply defined and closely focused resolution can be expressed succinctly in a plan to expedite efficient implementation.

An imprecise resolution may divert the study plan from focusing on clearly understood issues and may require the subcommittee later to devote additional time and effort to perfecting the plan.

Regardless of the conception and the expression of the study plan, the subcommittee has the responsibility for its adoption and the prerogative to determine its contents.

ACTIVITIES OF THE SUBCOMMITTEE

Because the objective of the interim study is to gather information and structure recommendations, the subcommittee may use various mechanisms to explore thoroughly its subject area. At the outset of the study, the background material will be provided by the researcher. Once embarked on its efforts, the subcommittee will probably engage in several activities aimed at developing all the information necessary for

enlightened decisions and workable recommendations. Those activities may include but are not limited to:

Public Hearings in which citizens are invited to appear before the subcommittee to explain the impact of the subject under consideration and to offer ideas to address the problem. As required by the Montana Constitution, all meetings of subcommittees are open to the public.

Informational Hearings in which experts or recognized authorities on the subject under consideration present the viewpoints of the professionals in the field.

Seminars in which persons educated, trained, or experienced in the field are retained to teach a subject in depth.

Field Trips in which subcommittee members travel to a location outside of Helena to inspect a site, observe operations, or view geographic, topographic, or natural features that are directly affected by or that directly influence a question of public policy.

Issues and Options Work Sessions in which members progress through a structured outline of the subjects that have emerged from research, testimony, and the original study resolution with the intent to build consensus, through voting or roundtable contributions, on the subcommittee's final recommendations or proposed legislation. Successful employment of this technique depends on the design of the issues and options workpaper and the willingness of all members to express themselves in such a forum.

Executive Sessions (which contrary to the usually accepted definition are not closed meetings) in which the subcommittee members discuss, review, analyze, and comment upon the information gathered, pose relevant questions, entertain and act on motions, and direct the staff to perform certain functions on the subcommittee's behalf.

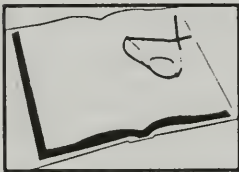
SUBCOMMITTEE BUDGET

The available funds as well as the subject matter assigned to a subcommittee and the range of topics to be covered must be considered in planning the tentative schedule of activities.

A statutory committee usually is funded by a direct appropriation.

Each subcommittee created as a result of a prioritized joint resolution is allocated a share of the Legislative Council's total interim study appropriation. The final budget allocation is usually determined after the adoption of the study design and work plan to assure that each subcommittee is adequately financed within the limits of the money available for the entire program.

All subcommittees are governed by the same statutory cost and expenditure constraints, but no two subcommittees are likely to have identical funding needs because of differences in:



¶ number of meetings required because of variations in the breadth or the complexity of the study topic;

- ¶ members' travel expenses and per diem that are dependent upon the distance from the legislator's home to meeting site; and
- ¶ special needs of the study, i.e., retaining consultants, purchasing informational material, or the necessity to meet outside of Helena.

Each of these variations is considered in establishing the subcommittee's budget. Reasonable changes may be approved later by the Legislative Council to cover unforeseen study problems.

MEMBERS' RESPONSIBILITIES

After the Legislature has mandated or requested the study and provided the necessary funding, and the support staff has been assigned, the most essential element in a fruitful study must be considered: the enthusiastic participation by the legislators appointed to the subcommittee.

A legislator who seeks and accepts appointment to an interim subcommittee must be prepared to devote effort and time to understanding the issues, evaluating the information presented, and formulating sound recommendations. To fill this role, the subcommittee member needs to:

- ¶ read each report, plan, proposal, or set of minutes presented by staff or interested persons in advance of meetings;
- ¶ share reports, plans, and other study documents with interested persons in his or her area to stimulate participation;

- ¶ invite comments and suggestions from constituents who are knowledgeable or concerned;
- ¶ bring to the meetings previously prepared questions and comments;
- ¶ pose questions and offer suggestions during meetings;
- ¶ hasten to redirect discussion to central issues when conversation strays from the topic; and
- ¶ communicate frankly with staff on matters such as preferred style and length of presentations, conduct of meetings, format of reports, and other topics pertinent to subcommittee business.

SUBMISSION OF FINAL REPORT

An inquiry or investigation of any subject is only as useful as the quality of its findings and the extent and availability of the published statement of those findings. For this reason, virtually every interim study resolution requests a report of its findings and of proposed legislation, if any, to the succeeding Legislature.

The gathering of information and the preparation of the subcommittee's final report, with accompanying bill drafts when necessary, are vital staff functions. The only role of the staff, however, is to compile and arrange the information developed during the study into a usable form and to express the subcommittee's conclusions and recommendations for the enlightenment of their fellow legislators and the public.



The final report usually recounts the input received by the subcommittee and quotes from or includes *in toto*

supporting documents as required. Any legislation recommended for enactment must be included in the final report.

The staff researcher writes the final report, conforming strictly to the agreement or consensus of the subcommittee. Though it seldom occurs, a minority report may be prepared if dissent from the findings of the majority is strong enough to warrant. A minority report may highlight a problem with specific conclusions only or it may take issue with the report more broadly.

The final report is a structured document consisting of:

- ¶ Copy of the bill or joint resolution that caused the creation of the subcommittee;

- ¶ roster of subcommittee members and staff;

- ¶ background discussion of the problem or circumstances that led to the study;

- ¶ recounting of the activities of the subcommittee and recapitulation of the information presented or discovered;

- ¶ statement of the subcommittee's findings and recommendations;

- ¶ copies of legislation approved by the subcommittee and recommended for enactment; and

- ¶ appendices as necessary to include supporting documents.

Except for the actual printing and binding, the Legislative Council staff utilizes modern computerized techniques and facilities to complete every step of the

production of the final report in-house. This capability gives the staff complete and immediate control over the quality and the progress of the project up to its final stage.

The number of copies of a final report that are printed depends upon the anticipated demand for distribution to the Legislature, members of the public, libraries, and interstate groups concerned with the subject matter and for exchange with state and national legislative service agencies.

COMPENSATION OF LEGISLATORS

Section 5-2-302, MCA, provides that when the Legislature is not in session and while engaged in legislative business with prior authorization of the appropriate funding authority, a legislator is entitled to a mileage allowance as provided in section 2-18-503, MCA, expenses as provided in sections 2-18-501 and 2-18-502, MCA, and salary equal to one full day's pay at the rate of a classified state employee in Grade 8, Step 2, as provided in section 2-18-312, MCA, for each 24-hour period from midnight to midnight, or portion thereof, spent away from home on authorized legislative business. **A statutory limit on the eligibility of a legislator for salary for interim activity is expressed in section 5-2-302(3), MCA:**



"...if time spent for business other than authorized legislative business results in lengthening a legislator's stay away from home into an additional 24-hour period, he may not be compensated for the additional day."

For members whose travel expenses are covered under Legislative Council appropriations for interim studies, the following rules are applied to establish reasonableness of a claim for travel in Montana:

- (1) Overnight lodging is reasonable when the member would be required to leave home earlier than 6:30 a.m. or arrive home later than 9:30 p.m. in order to have attended all of the meeting. To compute whether this would be required, an average travel speed of 45 miles an hour is assumed.
- (2) A subcommittee member is entitled to a day's salary when necessarily away from home for subcommittee business. A member is necessarily away from home on the day of a meeting and on any other day when travel qualified under (1) above is required.
- (3) A meal falling within reasonable travel times may be claimed.

The following mitigating factors may be applied to these rules:

- (1) The welfare of a subcommittee member, such as health and safety, will be considered. Weather is a key issue to be considered.
- (2) If a member flies instead of drives, variations will be considered. Generally, members should use the travel mode that provides the lowest overall cost to the state.
- (3) At times, members may choose more expensive modes of travel because of schedule conflicts that would make it impossible to attend a meeting otherwise. Such cases will be considered in establishing reasonableness.

For out-of-state travel, the same basic criteria will apply except that generally it will be assumed that commercial transportation is reasonable.

SUBMISSION OF LEGISLATORS' CLAIMS

To receive payment of salary and reimbursement of expenses for attendance at interim subcommittee meetings, the legislator must complete and sign a Statement of Expense, which will be provided to him or her at the meeting.

The legislator may give the expense statement to the secretary at the meeting or mail it later to the Legislative Council accounting supervisor. In either case, the statement must be accompanied by original receipts for lodging or for air transportation if payment is claimed for either. Credit card invoices are not acceptable.

All salary and expense claims for interim subcommittee activity are subject to approval by the chairman of the Legislative Council.

After approval and processing, a copy of the processed claim will be mailed to the legislator for tax purposes.

TAX TREATMENT OF LEGISLATORS' EXPENSES

For federal tax purposes, section 162(h) of the Internal Revenue Code allows legislators who live more than 50 miles from the Capitol to deduct the federal per diem rate per legislative day for living expenses without having to stay overnight away from home (the legislator is considered to



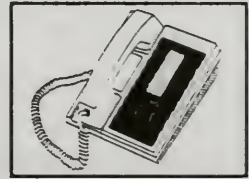
have stayed overnight) and without keeping substantiating records (the legislator is considered to have expended the federal per diem amount).

A legislative day, for the purposes of this law, encompasses attendance at legislative interim hearings and meetings as well as participation while the legislature is in session. A legislator, whether a member of an interim subcommittee or not, if formally recorded as having attended an interim committee meeting, may claim a \$66 expense for attending the meeting.

STAFF DUTIES

The typical interim subcommittee is served by a staff of three persons, who are assigned to act for the duration of the study, and who usually are full-time employees of the Legislative Council, which has statutory responsibility to provide staff assistance.

Staff costs are not charged against the subcommittee's budget but are borne by the Legislative Council from its appropriated funds.



THE RESEARCHER, who is the lead staffer, has primary responsibility for all aspects of implementation of the study, including:

¶ establishing preliminary contacts with all appointed members and assisting the acting chairman to determine acceptable dates for the organizational meeting;

¶ drafting a study plan, a work program, and a proposed schedule of meetings;

¶ performing preliminary research and drafting a background report on conditions creating the necessity for the study;

¶ completing arrangements for each meeting: reserving room, notifying committee members and interested persons, issuing press releases, providing any special equipment needed such as an overhead projector, contacting personnel of agencies concerned, drawing up an agenda and scheduling presentations, performing other research and liaison chores as requested by subcommittee members, and completing all other aspects of meeting arrangements including contacting each subcommittee member in advance of the meeting to discuss the agenda and providing each member well in advance of a meeting draft reports that will be subjects of discussion;

¶ performing research as directed by the subcommittee and any other research necessary to complete the subcommittee's assignment;

¶ writing the report of the subcommittee's findings as directed;

¶ drafting legislation to implement the subcommittee's recommendations; and

¶ assisting subcommittee members as necessary.

THE SECRETARY assigned to the subcommittee has the following responsibilities:

¶ prior to each meeting, sets up the meeting room, assuring that all necessary materials are provided to each subcommittee member, brews coffee as needed;

¶ oversees circulation of visitor's register to assure that all participants sign in;

¶ operates a tape recorder and keeps stenographic record;

¶ collects, marks, and records all documents and exhibits presented;

¶ gathers members' statements of expenses for delivery to the accounting supervisor; and

¶ following the meeting, prepares minutes consisting of condensed, paraphrased account of statements and comments received, subcommittee actions taken, decisions reached, and instructions to staff and accompanied by attachments of supporting documents submitted by witnesses or staff.

THE ATTORNEY assigned to the subcommittee:

¶ consults with the subcommittee and the researcher and provides advice as requested.

STAFF PERFORMANCE

The employees of the Legislative Council are carefully selected and trained for their proficiency in the abilities needed to provide the assistance for the successful conduct of an interim study. As professional, full-time legislative staffers (several of whom have more than a decade of experience in providing committee assistance plus other previous pertinent experience), they strive to complete their assignments at the highest level of competence while fulfilling all the demands of the subcommittee members and observing ethical proprieties and without interjecting personal opinions into the group's deliberations or discussions. If a subcommittee member feels the necessity either to praise superlative performance or to complain about less than satisfactory results, the comments should be directed to the staffer

concerned and at the same time the division director or the executive director should be notified.

